

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
2000 Biennial Regulatory Review--)	CC Docket No. 00-229
Telecommunications Service Quality)	
Reporting Requirements)	

**COMMENTS OF
FOCAL COMMUNICATIONS CORPORATION**

Focal Communications Corporation (“Focal”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking in the above-referenced proceeding.¹ Focal is a facilities-based provider of data and voice communications services, serving primarily traffic-intensive users of local services, value-added resellers, and Internet service providers in major markets nationwide.

Focal urges the Commission to refrain from reducing the ILECs’ obligations to provide service quality reporting under the Automated Reporting Management Information System (“ARMIS”). Because ILECs are still the dominant provider of local exchange services, such reporting requirements are essential to ensure that ILECs are meeting their retail service obligations to end users, and their wholesale service obligations to CLECs. Moreover, the Commission should not impose any service quality reporting obligations on CLECs at this time. Because CLECs are beholden to the ILECs in their provisioning of services, measuring CLEC service quality is unnecessary and would further hinder competition by placing an additional burden on carriers already experiencing difficulties competing with the ILECs.

¹ In the Matter of 2000 Biennial Regulatory Review—Telecommunications Service Quality Reporting Requirements, *Notice of Proposed Rulemaking*, CC Docket No. 00-229 (rel. November 9, 2000) (“*NPRM*”).

I. The Commission Should Retain ILEC Service Quality Reporting Requirements and Increase its Scrutiny of that Data

In its *NPRM*, the Commission proposes to “eliminate the bulk of the existing service quality reporting requirements, which no longer make sense in today’s marketplace.”² Specifically, the Commission seeks to reduce the ARMIS reporting requirements for price cap ILECs from over thirty categories of information to six streamlined categories.

Focal urges the Commission to rethink its assessment of the competitive environment in the current telecommunications marketplace, and therefore, continue to require service quality reporting from the ILECs. Although it has been five years since the passage of the 1996 Telecommunications Act, the local exchange market is far from being robustly competitive. Even with the entrance of numerous CLECs into the market and substantial capital expenditures, the ILECs still control over 90% of the local exchange market. This is because the ILECs continually fail to comply with the requirements of the 1996 Act and behave in an anticompetitive manner to undermine the ability of CLECs to obtain and retain customers.

Nowhere is such anticompetitive behavior more apparent than in the provisioning of special access services, which is one of the categories measured by the ARMIS reports. Although the report measures special access services provided to interexchange carriers, the same ILEC provisioning operation and personnel that provide special access circuits to IXC also provision CLEC special access circuit orders. Special access provisioning is essential for developing competition since CLECs order special access

service as a means for competitive entry. Focal has found that ILEC provisioning of such services has been abysmal, which has undermined its ability to compete in the local markets. Although special access services are vital to competition, ILEC provisioning of such services is typically not included in the performance measures and penalty provisions of many CLEC interconnection agreements, and these measures have not been included as part of the FCC's 271 application review process. Therefore, the ARMIS reports are the only current means for the Commission to review and audit the ILECs' performance of this critical service.

While the Commission noted in the *NPRM* that it was instructive to consider the experience of the airline industry in streamlining service quality rules,³ the Commission should consider the vast differences between the airline industry and the telecommunications industry. For example, the airline industry does not have a bottleneck provider in the same manner as the local telecommunications industry. Once the airline industry was deregulated, each airline could purchase airplanes and transport passengers without relying on the monopoly airline to deliver planes or provide other services. In contrast, the Telecommunications Act of 1996 provided for competition in the local exchange by permitting competitive providers to obtain access to the facilities of the ILEC. Reasonably ascertaining that the public would not want multiple local exchange providers installing wires into their homes and building redundant networks in the streets, Congress required the ILECs to permit CLECs to utilize their facilities that had already been paid for by the public ratepayers. Unlike the airline industry, CLECs that enter the "newly competitive" telecommunications market, still must rely on the

² NPRM, at ¶ 2.

ILEC in order to obtain the necessary facilities to provide service. Therefore, competition has been much slower to develop, because CLECs must rely on the ILECs to compete, and the ILECs have taken advantage of their position as the bottleneck to hinder CLEC ability to obtain and retain customers.

Because of this lack of bottleneck, the airline industry is effectively competitive and the telecommunications industry is not. To fly between most U.S. cities, customers can choose between multiple carriers. In contrast, in most parts of the United States, customers can still only choose the ILEC as their local telephone service provider.

Although it is a good idea to streamline reporting requirements once a market has become competitive, eliminating such requirements too early could actually hinder a burgeoning competitive market. Rather than eliminate reporting requirements, Focal believes that the Commission should require additional reporting from the ILECs. Indeed, the current body of evidence illustrates that rather than improving, ILEC service quality has been getting worse.⁴ This deterioration has occurred in both the retail and the wholesale market.⁵ Therefore, rather than reducing the reporting obligations of the ILECs, the Commission should seriously consider increasing the obligations.

For example, Focal agrees with the Commission's suggestion that ILEC service reporting should be expanded to include broadband and other advanced services.⁶ This

³ *NPRM*, at ¶ 12.

⁴ The evidence provided by the graphs on the FCC's ARMIS website demonstrates deteriorating service quality in the last few years. The FCC data also reveals that service quality deterioration appears to be worse for wholesale customers than retail customers.

⁵ *See, e.g.*, Joint Statement of the Chairpersons of the Illinois, Indiana, Michigan, Ohio, and Wisconsin PUCs (rel. Sept. 29, 2000) ("In addition to declining retail service levels to consumers, SBC/Ameritech's wholesale customers . . . have also experienced marked declines in service quality The Commissions and their staffs continue to hear and be concerned about bottlenecks created by SBC/Ameritech where competitive telephone service carriers are attempting to deliver service to customers.")

⁶ *NPRM*, at ¶ 25.

data should be analyzed not only to ensure that consumers are obtaining quality service, but also to assess whether the ILEC is gaining unfair advantage in the marketplace.

The Commission should also consider requiring ILECs to file their service quality reports on a semi-annual or quarterly basis. This would provide better information as to how the ILECs are performing in their provisioning obligations and allow the Commission to identify problems in a more timely manner.

II. The Commission Should Not Impose Reporting Requirements on CLECs

In order to promote competition, it is essential that the Commission refrain from imposing these reporting requirements on CLECs. As explained above, CLECs continue to be dependent upon the ILEC provisioning in order to provide local exchange service. This is the case whether the CLEC provides service through the resale of ILEC services, the purchase of special access or the purchase of UNEs. In every instance CLECs must obtain provisioning from the ILECs in order to provide service to customers. Therefore, imposing such reporting requirements on CLECs would not give the Commission any further insight because CLEC provisioning is ultimately dependent upon the provisioning obtained from the ILECs.

More importantly, however, requiring CLECs to engage in such reporting, for the purpose of allowing consumers to compare carrier provisioning, would provide incentive for the ILECs to further diminish their service to the CLECs. Because CLECs can not provision their customers without first obtaining facilities from the ILECs, the ILECs have every incentive to provide poor service to the CLECs to diminish CLEC service quality. Then, the ILECs would be able to use the reports to their advantage and argue that they provide superior service, when in reality, the ILECs were the cause of the CLEC

service difficulties. Accordingly, requiring CLECs to participate in ARMIS reporting would be unfair and would provide incentive to ILECs to further inhibit CLEC performance.

Moreover, imposing additional and unnecessary reporting requirements on CLECs would be overly burdensome. Unlike ILECs, most CLECs are start-up companies with limited financial resources. The collection and reporting of data is expensive and consumes CLEC resources that would be better spent obtaining facilities to serve additional customers. This is especially true since CLEC customers always have an alternative service provider—the ILEC. Unlike most ILEC customers, CLEC customers can always switch to the ILEC if they are unsatisfied with the service quality the CLEC provides. It is therefore, unwise to require CLECs to expend resources to provide unnecessary data.

III. CONCLUSION

For the reasons stated above, Focal urges the Commission to maintain the current reporting obligations for the ILECs. If anything, the Commission should consider adopting additional reporting obligations to limit the ability of the ILECs to behave in an anticompetitive manner. In addition, the Commission should not impose reporting requirements on the CLECs at this time. Such obligations are burdensome and unnecessary since CLEC performance is intrinsically tied to the provisioning CLECs receive from the ILECs.

Respectfully submitted,

/s/

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